

REMARKS

Claims 39-68 are pending in the application, claims 1-38 having been previously canceled. Claims 39, 44, 49, 50, 54, 59, and 64 have been amended. No claims have been canceled or added in this Amendment. This Amendment does not add new matter. In view of the foregoing Amendment and following Remarks, allowance of all the pending claims is requested.

Objections to the Claims

The Examiner has objected to claim 44 because of an informality. Applicant has amended claim 44 to address this informality. Accordingly, the Examiner must withdraw this objection.

Objections to the Specification

The Examiner has objected to the specification as allegedly failing to provide proper antecedent basis for computer readable medium. See Office Action at page 2. Applicant disagrees with the Examiner for at least the reason that those having ordinary skill in the art would appreciate that an "application server [that] may include one or more applications," for example, provides support for a computer readable medium. See e.g., Specification at page 6, lines 20-30. Accordingly, Applicant requests that the Examiner withdraw this objection.

Rejection Under 35 U.S.C. § 101

The Examiner has rejected claims 39-48 and 59-68 as allegedly being directed to non-statutory subject matter. Applicant traverses these rejections because the claims are directed toward statutory subject matter.

Regarding claims 39-48, the Examiner alleges that these claims are software *per se*. See Office Action at page 3. Specifically, the Examiner alleges that an "application server" and "analyzer component" are software. See Office Action at page 3. Applicant traverses the rejection for at least the reason that those having ordinary skill in the art

would appreciate that a "system for monitoring performance of one or more database calls comprising," as recited in claim 39, for example, is not software per se.

Nonetheless, solely to expedite prosecution of this application, Applicant has amended claim 39 to recite: "at least one electronic computing device." Claim 39 as amended is clearly directed toward statutory subject matter. For at least this reason, the rejection of claim 39 is improper and must be withdrawn. Claims 40-48 depend from and add features to claim 39. Accordingly, the rejection of these dependent claims must likewise be withdrawn.

Regarding claims 59-68, the Examiner alleges lack of antecedent support in the specification and that one of ordinary skill in the art at the time the invention was made would "interpret computer readable medium as a signal." See Office Action at page 3. Applicant traverses the rejections for at least the reasons set forth above with regard to antecedent basis and for at least the reason that the rejection has no basis in the law. Furthermore, Applicant does not intend "computer readable medium" recited in these claims to be interpreted as solely signals *per se*, in a manner inconsistent with the law set forth in *In re Nuijten*, Appeal No. 2006-1371 (CAFC, decided September 20, 2007). Accordingly, for at least these reasons, the rejection of claims 59-68 is improper and must be withdrawn.

Rejection Under 35 U.S.C. § 103(a)

The Examiner has rejected claims 39-68 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,816,874 to Cotner et al. ("Cotner") and U.S. Patent Application Publication No. 2002/0016814 by Convent et al. ("Convent"), and U.S. Patent No. 6,901,582 to Harrison ("Harrison"). Applicant traverses these rejections for at least the reason that the references relied upon by the Examiner, either alone or in combination with one another, do not teach or suggest all the features of the claimed invention.

In particular, Cotner does not teach or suggest at least the feature of "identifying the at least one process that generated the one or more database calls by correlating the first set of one or more parameters with the second set of one or more parameters" as recited in claim 49, for example. Claims 39 and 59 recite similar features. In the

Office Action, the Examiner alleges that Cotner teaches this feature where “returned data contain data on the number of get pages, number of reads, number of writes, act that occurred during the execution of the SQL statements between calls.” See Office Action at pages 4-5. However, the portions of Cotner relied upon by the Examiner apparently describe types of performance data and not identifying processes that made database calls. See, e.g., Cotner at column 6, lines 60-67.

Furthermore, Cotner does not need to identify the SQL application that generated the SQL in order to monitor performance of the SQL because the “SQL application...passes parameters when calling the performance monitor stored procedure.” See, e.g., Cotner at column 4, lines 13-16, and 20-21 (emphasis added). The performance monitor already has the identification of the SQL application because the performance monitor was called by the SQL application. For at least this reason, the performance monitor of Cotner does not teach or suggest “identifying the at least one process that generated the one or more database calls” as recited in claim 49, for example.

In addition, even if there is a need to identify this relationship in Cotner (the propriety of which Applicant does not concede), this identification is not accomplished by “correlating the first set of one or more parameters with the second set of one or more parameters,” as recited in claim 49, for example.

Accordingly, Cotner does not teach or suggest all the features of claims 39, 49, and 59. Convent and Harrison fail to cure the defects of Cotner discussed above. Therefore, for at least these reasons, the references relied upon by the Examiner, either alone or in combination with one another, fail to teach or suggest all the features of claims 39, 49, and 59. Therefore, the rejections of these claims are improper and must be withdrawn. Claims 40-48, 50-58, and 60-68 depend from and add features to one of claims 39, 49, and 59. As such, for at least the reasons set forth above, the rejections of these dependent claims are likewise improper and must be withdrawn.

CONCLUSION

Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, the application is in condition for allowance. Notice to that effect is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

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Respectfully submitted,

By:



Hean L. Koo

Registration No. 61,214

Customer No. 00909

PILLSBURY WINTHROP SHAW PITTMAN LLP
P.O. Box 10500
McLean, Virginia 22102
Main: 703-770-7900
Direct Dial: 703-770-7673
Fax: 703-770-7901